

Developing Project-Level Forced Labor¹

Definitions: Creating a common understanding of the legal framework

January 2018

This document provides guidance in developing project-level definitions of forced labor for projects that will not directly collect data on forced labor from individuals.² The purpose of these definitions is to serve as a basis for common understanding of forced labor between project staff and relevant stakeholders, which could be government partners, NGO and civil society staff, journalists, and others. These definitions will provide a solid underpinning for project efforts to advocate for improvement in national labor and social protection legislations or raise awareness about forced labor.

OCFT developed this guide to help grantees produce two required outputs that will support a common understanding of definitions: Output 1) a table outlining the national and international legal frameworks for key terms needing definition; Output 2) a visual conceptual framework to be used in communications with stakeholders.

OCFT must review and approve project definitions prior to their use. Grantees should discuss the timeline for developing these definitions with OCFT, including whether they must be completed prior to the start of situational analysis, KAP surveys, or other project activities. Therefore, OCFT recommends that projects start the development of forced labor definitions as soon as possible after project award (see OCFT's Management Procedures and Guidelines for timelines). Grantees should review this guidance document carefully and contact the relevant OCFT Project Manager and/or M&E team member with any questions.

¹ The terms 'forced labor', 'human trafficking', and 'modern slavery' are sometimes used interchangeably, but DOL treats each concept as distinct. DOL bases its definitions of forced labor and human trafficking on their respective international instruments (such as conventions, protocols, etc.). The definitions and terminology outlined in this document and in DOL projects are guided by the definitions in key international instruments, specifically ILO Convention 29 on Forced Labor. It is also important to note that while ILO and Walk Free Foundation have produced a global estimate on modern slavery, there is no international instrument that officially defines the term.

² Direct service projects should follow a separate, more detailed definitions guide aimed at assisting projects to develop measurable definitions of forced labor. Please contact OCFT for the more detailed guide.

1) Table of National and International Legal Frameworks Relevant to Forced Labor Definitions (Output 1)

Two ILO conventions – 29 and 105 - provide a framework for defining forced labor and formulating legislation and policies to combat forced labor. Protocol 29 of 2014 supports C29, providing guidance on steps countries should take to prevent and eliminate forced labor, provide protection to victims and access to appropriate and effective remedies, and to sanction the perpetrators of forced labor, including trafficking in persons for the purpose of forced labor.³ In addition, two UN Conventions (1926 Slavery Convention, Supplementary 1956 convention), ILO Convention 182 on the Worst Forms of Child Labor (1999), and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), known as the “Palermo Protocol”, provide definitions of forced labor-related terms and concepts. The U.N. Convention on the Rights of the Child and Optional Protocols related to the sale of children; prostitution and child pornography; and children in armed conflict should also be examined. Links to the text of all of these legal frameworks are provided in the table below. Projects may refer to the relevant country report in OCFT’s most recent *Findings on the Worst Forms of Child Labor* report⁴ to see legal frameworks and gaps related to forced labor of children. The report includes sources specifying where to locate these documents. Projects may also use the ILO’s NORMLEX database⁵ to verify the international legislation ratified by countries, and the ILO’s NATLEX database⁶ to identify relevant national legislation.

Based on the above legal frameworks, the ILO has developed an operational definition and survey guidelines to help measure forced labor, in a publication called “Hard to see, harder to count.”⁷ Projects interested in developing a more detailed understanding of FL could use “Hard to see, harder to count” for detailed guidance on developing specific indicators of forced labor for children and adults, based on the international legal frameworks outlined above. Grantees should note that “Hard to See, harder to count” may be revised in the coming years; please contact OCFT for updated information.

Required Output 1 is a table detailing the relevant international and national legislation on forced labor, to be used as the basis for project definitions. Table 1, below, which summarizes relevant international legal frameworks, is intended to be the starting point for developing project-level definitions. Projects may use this table as a template or develop their own format. Projects are encouraged to include the exact international legal framework language below and must add in relevant language from national

³ ILO Protocol 29 (2014) to the Forced Labor Convention 29 (1930). Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029

⁴ OCFT, Findings on the Worst Forms of Child Labor. Available at: <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings>

⁵ ILO NORMLEX is a database showing countries’ ratification status of international labor standards, searchable by country. Available at: <http://www.ilo.org/dyn/normlex/en/f?p=1000:11003::NO::>

⁶ ILO NATLEX is a database of national labor social security and related human rights legislation, searchable by country. Available at: http://www.ilo.org/dyn/natlex/natlex4.byCountry?p_lang=en

⁷ ILO, Hard to see, harder to count: Survey Guidelines to Estimate Forced Labor of Adults and Children. June 2012. Available at: http://www.ilo.org/global/topics/forced-labour/publications/WCMS_182096/lang--en/index.htm

legislation. Projects should also locate and review relevant national legislation in detail to develop definitions per the highlighted information at the beginning of each section.

Table 1: Forced Labor Definitions – International and National Legal Framework

Adults and children engaged in Forced Labor	<p>National legal framework: <i>Include here any national legal framework definitions of forced labor of adults and/or children, which may include the Labor Code, Constitution, etc. It should also include definitions of trafficking in persons, including any national legislation addressing “The Act/what was done”, “The Means/how it was done”, and “The Purpose/why it was done” (see Palermo Protocol, below, for more on this). For both national and international legal frameworks, each line of text should cite relevant legal documents/sources. If the country of operations has not ratified a convention listed below, projects should discuss how to move forward with OCFT.</i></p> <p>International legal framework: International Labor Organization (ILO) Convention 29, 1930⁸, is the most authoritative convention on Forced Labor.</p> <p>ILO C. 29, Article 2, defines ‘forced or compulsory labor’ as:</p> <p style="padding-left: 40px;"><i>All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.</i></p> <p>This definition excludes compulsory military service, ‘normal civic obligations’ of a nation or community, work mandated as a result of a court conviction, and work required in certain emergency situations. These exclusions are not applicable for persons under age 18 (children).</p> <p>ILO C. 29 does not specifically address the forced labor of children, but ILO Convention 182 on Worst Forms of Child Labor Convention, 1999, Section A⁹, names “All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict”.</p> <p>The UN Convention on the Rights of the Child¹⁰ and Optional Protocols supports ILO Convention 182 related to the use of children in drug production and trafficking (CRC Article 33); the sale or trafficking of children, and the use of</p>
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⁸ ILO Convention 29:

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029
 Grantees should be aware of the accompanying Protocol 29. See full text here:

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029

⁹ ILO Convention 182:

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

¹⁰ UN Convention on the Rights of the Child: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

	<p>children in prostitution and pornography (CRC Articles 34-35 and Optional Protocol¹¹); and the involvement of children in armed conflict (CRC Article 38 and Optional Protocol¹²).</p> <p>International Labor Organization Convention 105, 1957¹³</p> <p>ILO Convention 105 (C. 105), the Abolition of Forced Labor Convention, requires members that ratify C.105 to specifically suppress and not make use of any form of forced or compulsory labor:</p> <ul style="list-style-type: none"> • <i>As a means of political coercion or education or as a punishment for holding or expressing political views ideologically opposed to the established political, social or economic system;</i> • <i>As a method of mobilizing and using labor for purposes of economic development;</i> • <i>As a means of labor discipline;</i> • <i>As a punishment for having participated in strikes;</i> • <i>As a means of racial, social, national or religious discrimination.</i> <p>The League of Nations Slavery Convention, 1926¹⁴</p> <p>This convention defines ‘slavery’ as the “status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” (Article 1(1)). Although the definition provided in the convention does not mention work, Article 5 requires ratifying countries to take “all necessary measures to prevent compulsory or forced labor from developing into conditions analogous to slavery.”</p> <p>The United Nations Supplemental Convention on Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956¹⁵</p> <p>This convention calls for the progressive abolition of ‘debt bondage’ and ‘serfdom’ and other ‘practices related to slavery’:</p>
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¹¹ Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

¹² Optional Protocol on the Involvement of Children in Armed Conflict:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>

¹³ ILO Convention 105, 1957:

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C105

¹⁴ Slavery Convention, 1926: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>

¹⁵ The United Nations Supplemental Convention on Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>

	<ul style="list-style-type: none"> • Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined; • Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labor on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status. • Practices related to slavery, or: Any institution or practice whereby: <ul style="list-style-type: none"> - A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or - The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or - A woman on the death of her husband is liable to be inherited by another person; - A child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labor. <p>Trafficking in Persons</p> <p>The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000, or “Palermo Protocol”¹⁶</p> <p>The Palermo Protocol is a supplemental protocol to the United Nations Convention Against Transnational Organized Crime. The Protocol’s definition of trafficking in persons has become a standard model for national legislation:</p> <p><i>The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the</i></p>
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¹⁶ The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000, or “Palermo Protocol”:
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

	<p><i>purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.</i></p> <p>The UNODC breaks down the protocol's definition of human trafficking into three elements¹⁷:</p> <ol style="list-style-type: none"> 1) The Act (What is done) <i>Recruitment, transportation, transfer, harboring or receipt of persons</i> 2) The Means (How it is done) <i>Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim</i> 3) The Purpose (Why it is done) <i>For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs.</i> <p>Coercive sexual exploitation and forced prostitution are included in the definitions of forced or compulsory labor.¹⁸ The consent of a victim of trafficking to the intended exploitation is irrelevant where any of the means specified above have been used. In the case of a child, there is no need for any of the means cited above to be used; the child is a victim of trafficking if he or she is subject to recruitment, transportation, transfer, harboring or receipt for the purpose of exploitation.¹⁹</p>
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¹⁷ See UNODC for more information on this framing, available at: <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>

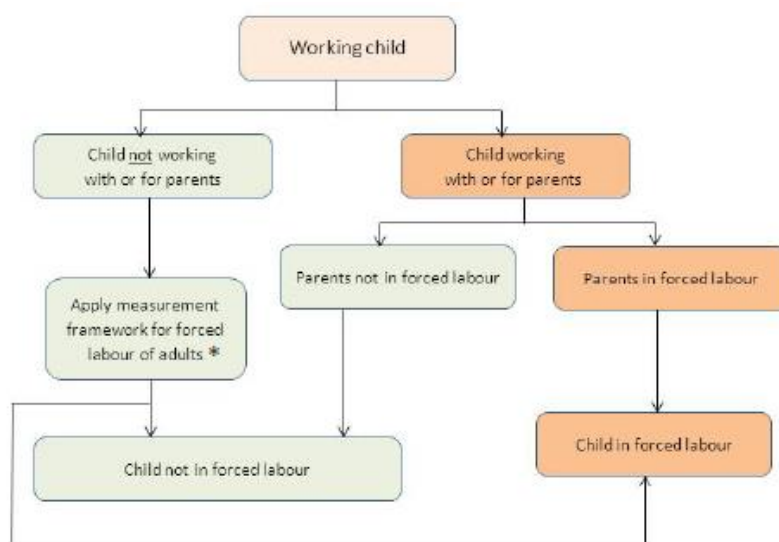
¹⁸ ILO: Eradication of forced labor, General Survey concerning the Forced Labor Convention, 1930 (No.29), and the Abolition of Forced Labor Convention, 1957 (No.105). Geneva. 2007. Available at: http://www.ilo.org/global/meetings-and-events/WCMS_089199/lang--en/index.htm

¹⁹ ILO, Hard to see, harder to count: Survey Guidelines to Estimate Forced Labor of Adults and Children. June 2012. Available at: http://www.ilo.org/global/topics/forced-labour/publications/WCMS_182096/lang--en/index.htm

2) Example Visual Conceptual Frameworks of Forced Labor of Children and Adults (Output 2)

When communicating the concept of forced labor to non-forced labor experts, it can be helpful to use a graphic tool to help stakeholders visualize the concept of forced labor. These visual conceptual frameworks may be used in communicating the meaning of forced labor to stakeholders, project staff, and others. This section includes two examples of a visual conceptual framework: one for forced labor of children, and one for forced labor of adults. Forced labor projects should develop one or both visual frameworks, depending on the focus of the project. Each project must develop conceptual visual frameworks that reflect the international and national legal frameworks outlined in the definitions table, above. Where there are differences in the national and international legal frameworks, projects should discuss with OCFT how to develop the most useful visual conceptual frameworks; projects do not need to use the exact examples provided below, but may use them if there are no differences between the national and international legal frameworks. The OCFT Monitoring and Evaluation Team is available to support the development of these frameworks upon request.

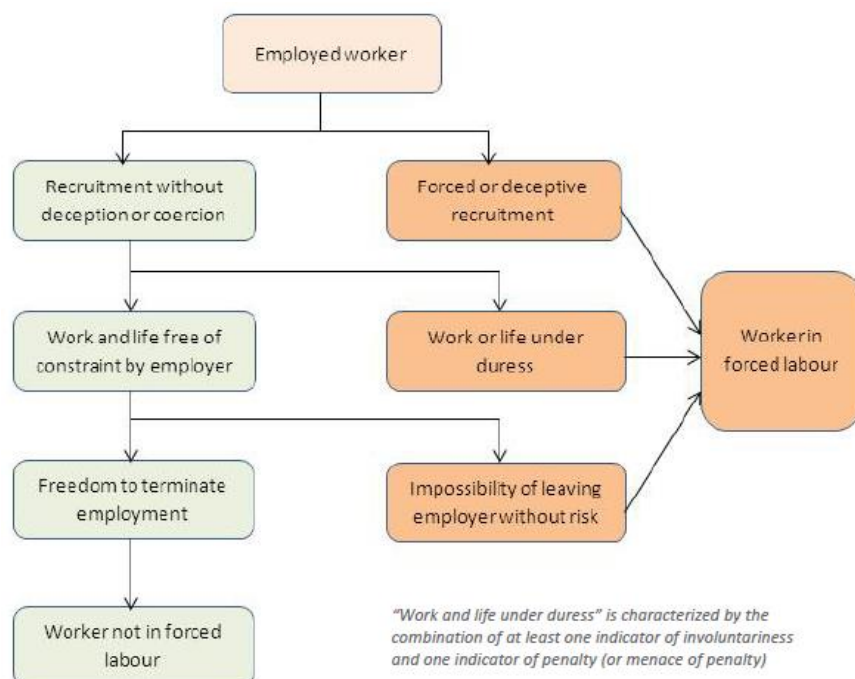
Figure 1: Forced Labor of Children Conceptual Framework²⁰



* with indicators specific to forced labour of children

²⁰ ILO, Hard to see, harder to count: Survey Guidelines to Estimate Forced Labor of Adults and Children. June 2012. Available at: http://www.ilo.org/global/topics/forced-labour/publications/WCMS_182096/lang--en/index.htm

Figure 2: Forced Labor of Adults Conceptual Framework²¹



²¹ ILO, Hard to see, harder to count: Survey Guidelines to Estimate Forced Labor of Adults and Children. June 2012. Available at: http://www.ilo.org/global/topics/forced-labour/publications/WCMS_182096/lang--en/index.htm